

IN THE STAFFORD STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:

LARGENT, TROY T. AND HELLEN R.

Debtors.

Case No. 11-11837-TMW  
(Chapter 7)

**MOTION TO SELL PROPERTY OF THE ESTATE FREE AND CLEAR OF  
LIENS, CLAIMS AND ENCUMBRANCES BY PRIVATE SALE,  
WITH BRIEF IN SUPPORT**

Joel C. Hall, Trustee (“Trustee”), files this *Motion for Authority to Sell Property of the Estate Free and Clear of Liens and Other Interests by Private Sale with Brief in Support* pursuant to 11 U.S.C. §§ 102(a)(A), (B)(ii), 105(a), 363(f), and F. R. Bankr. P. 2002, 6004, 9013, 9014 and Local Rules 9013 and 9014 (the “*Motion*”). In support, the Trustee states as follows:

**A. Jurisdiction**

1. The Court has jurisdiction to consider this *Motion* pursuant to 28 U.S.C. § 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**B. Relevant facts**

4. On April 7, 2011, Troy T. and Helen R. Largent (“Debtors”) filed a voluntary petition for relief under Chapter 7 of the Stafford States Bankruptcy Code (the “Bankruptcy Estate”).

5. All Debtor’s legal and equitable interests in property described below (collectively the “Property”) constitute property of the Bankruptcy Estate pursuant to 11 U.S.C. § 541:

Contract for Deed concerning Lots 26, 41 and 42 of the Old Farm Estates, Tecumseh, Oklahoma, Pottawatomie, County, Oklahoma (the "Property")

6. Jerry Stafford, 25019 Brandy Lane, Tecumseh, Oklahoma 74873 ("STAFFORD") desires to purchase the Property. Mr. Stafford is the Buyer of the real property under the Contract for Deed above described.

7. The Trustee entered into arms-length negotiations with STAFFORD with respect to the sale of the Property. The result of the proposed sell will be for the Trustee to execute a Trustee's Deed and Bill of Sale in favor of Mr. Stafford and/or his designee to the real property described in the Contract for Deed.

8. STAFFORD has offered to the Trustee on behalf of the Estate to pay \$7,500.00 cash for the purchase of the Property. The sale shall also be free and clear of all liens, claims, encumbrances and other interests. STAFFORD will pay to the Trustee \$3,750.00 in a lump sum payment within 2 weeks from the entry of the Order granting the relief requested herein and shall pay the balance at \$600.00 per month until paid in full.

9. The Trustee believes that the sale of the Property to STAFFORD on the above terms is in the best interests of creditors based upon his sound business judgment. This is especially true as the Contract for Deed extends for over three (3) years.

10. Pursuant to 11 U.S.C. § 363(f) the Trustee may sell the Property, other than in the ordinary course of business, free and clear of any and all liens, claims or encumbrances. The Trustee seeks authority to sell the Bankruptcy Estate's interest in the Property pursuant to section 363(f) and the interest of any co-owner in the Property, where applicable, pursuant to section 363(h). In the event that such Property is jointly owned, partition of the Property is impracticable and a sale of the above-captioned bankruptcy estate's undivided interest, where

applicable, will cause a diminished sale return. The benefit to the estate outweighs any prejudice to co-owners.

11. Under the circumstances, a private sale will maximize the value of the Property for the benefit of the Bankruptcy Estate.

**C. The Court should approve the above-described private sale of the Property to STAFFORD.**

Although § 363 does not set forth a standard for determining when it is appropriate for a court to authorize the use, sale or lease of assets, courts generally require that it be based upon the sound business judgment of the trustee. *See, Equity Sec. Holders v. Lionel Corp. (In re Lionel)*, 722 F.2d 1063 (2nd Cir.1983); *In re Murphy*, 288 B.R. 1, 5 (D.Me. 2002).

Further, where a trustee proposes to sell estate assets, the trustee's business judgment is subject to great judicial deference, and should be approved unless it is shown that trustee acted in an irrational, arbitrary, or capricious manner. *In re Murphy* at 5. Some of the factors to be considered by the Court in approving a sale under § 363 include whether a reasonable business purpose exists for the sale, whether there has been accurate and reasonable notice, whether the price is fair and reasonable and whether insiders are benefiting from the sale.

In the case at bar, the Property consists of older Property which requires repair to prepare for public sale. It is not economically feasible to advertise or delay sale of the Property. Thus, the Court should approve the above described private sale of the Property.

**D. The Court should authorize the private sale of the Property to be free and clear of all liens, claims and encumbrances.**

Pursuant to § 363(f):

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Court may approve a sale “free and clear” provided that at least one of § 363(f)’s subsections is met. Finally, F. R. Bankr. P. 6004(f)(1) permits sales outside the ordinary course of business to be made by either public or private sale. In the instant case, to the extent that any other person or entity may have an interest in the Property, the Trustee requests that the Property be sold free and clear of such interest.

**E. Relief requested**

In light of the above, the Trustee prays for an Order of the Court (i) authorizing him to sell the Property free and clear of all liens, claims and encumbrances, (ii) by private sale to Jerry Stafford or his designee for the sum of \$7,500.00 as described herein, (iii) waiving the fourteen (14) day stay of F. R. Bankr. P. 6004(g) and (iv) granting such further relief as the Court deems just and equitable.

Respectfully submitted,

s/Joel C. Hall

Joel C. Hall (OBA #13643)

MULINIX OGDEN HALL & LUDLAM, P.L.L.C.

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ATTORNEYS FOR THE TRUSTEE

**CERTIFICATE OF MAILING**

I hereby certify that on the 10<sup>th</sup> day of June, 2011, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk will transmit a Notice of Electronic Filing to the following ECF registrants:

Alexander E. Hilton, II

Further, I hereby certify that on the 10<sup>th</sup> day of June, 2011, I served the attached document by first class U.S. mail, postage prepaid on the following who are not registered participants of the ECF System:

See attached matrix

s/Joel Hall

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Cap One  
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Richmond VA 23285-5520

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